

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 11 - 20 are pending in the application. Currently, all claims stand rejected.

By the present amendment, claims 11, 13, 15, and 18 have been amended; claim 12 has been cancelled without prejudice; and new claims 21 - 24 have been added to the application.

In the office action mailed February 12, 2008, the Examiner rejected claims 11 - 15 and 18 under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0220643 to Ferree in view of U.S. Patent No. 5,180,393 to Commarmond; rejected claims 16, 17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Ferree in view of Commarmond and further in view of U.S. Patent Publication No. 2002/0173791 to Howland; and rejected claim 20 under 35 U.S.C. 103(a) as being unpatentable over Ferree in view of Commarmond and Howland.

The foregoing rejections are traversed by the instant response.

Independent claim 11 is directed to a linking element for a spinal fixation system designed to link at least two implantable connecting assemblies. The linking element comprises at least partly of a support made of polymer material and a rod

substantially coaxial with said support, a spring being formed of a plurality of turns surrounding the rod, said support being cylindrical or tubular in shape and having an inner diameter, said turns having an inner diameter which forms a cylindrical space in which said rod is positioned and an external diameter which is greater than said inner diameter of said support resulting in said turns being at least partly embedded in said support.

Independent claim 18 is directed to a spinal fixation system comprising at least two implantable connecting assemblies linked by at least one linking element having the same structure as the linking element of claim 11.

A review of the Ferree publication shows that it fails to disclose or suggest the structure set forth in claim 11 for the linking element. The Examiner contends that Ferree discloses a device comprising a support made from plastic and a second rod (Figure 6(c) of the reference), which second rod is formed of turns partly embedded in the plastic support. Ferree however lacks any disclosure of the turns having an inner diameter which forms a cylindrical space in which a rod is positioned and an external diameter which is greater than said inner diameter of said support resulting in said turns being at least partly embedded in said support.

As indicated on page 2, paragraph 29, lines 7 to 9: "Fig. 6c is a side view of the alternative embodiment of the invention drawn in Fig. 6A, including sleeves 610, 612 *placed over* (emphasis added) the springs." There is no further discussion of the structure of the sleeves. Thus, it is not clear that the sleeves 610 and 612 have an inner diameter. In fact, the construction of the sleeves is not clear from the Ferree disclosure. An obviousness rejection may not be based on speculation or mere possibilities or probabilities. An obviousness rejection must be based on sufficient detail to show that the reference was in possession of the claimed structure.

Still further, Ferree does not disclose or suggest in the embodiment shown in FIG. 6(c), a first rod substantially coaxial with the support, which first rod is surrounded by the turns of the second rod. Still further, the springs do not surround any structure which could be called a rod.

With respect to Commarmond, it discloses an artificial ligament consisting of a longitudinal primary winding (20) arranged between the narrowed areas (5) and (15) of two successive eyelets (1, 10). The longitudinal primary winding (20) is covered by a transverse secondary winding (25) arranged in contiguous spirals around the longitudinal primary winding (20). The longitudinal primary winding (20) confers rigidity upon the assembly during traction. In contrast, the transverse

secondary winding (25) acts as a wedge and gives the ligament stiffness during compression. The artificial ligament is arranged between each lumbar vertebra and the sacrum.

It is submitted that the Commarmond artificial ligament is for an entirely different purpose than the Ferree device which is directed to a device for preventing spinal extension. The Ferree device is designed to inhibit full extension; whereas, the Commarmond device is designed to have a flexibility preserving pedicle fixation combined with a stiffness during traction and during compression, limiting the kyphosis/lordosis between two vertebrae, and consequently, the shearing of the discs. There is absolutely no reason why Ferree would want to have a secondary winding which acts a wedge and provides stiffness during compression. Thus, there is no reason to combine the references in the manner suggested by the Examiner. The mere fact that a structure is disclosed in the prior art is not sufficient basis to find obviousness.

Still further, Commarmond does not cure the defect in Ferree of the second rod being embedded in the support. In Commarmond, there is no support surrounding the winding (25). Therefore, even if the references were properly combinable, they would not meet all of the limitations of independent claims 11 and 18.

For these reasons, claims 11 and 18 are allowable over the cited and applied references.

Claims 13 - 17, 19 and 20 are allowable for the same reasons as their parent claims as well as on their own accord. The Howland publication does not cure the aforementioned deficiencies of Ferree and Commarmond.

New claims 21 - 24 are allowable for the same reasons as their parent claims as well as on their own accord.

The instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is hereby invited to contact Applicant's attorney at the telephone number listed below.

Please charge the fee for a one month extension of time to Deposit Account No. 02-0184.

Should the Director determine that an additional fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,

By /Barry L. Kelmachter #29999/
Barry L. Kelmachter
Attorney for Applicant
Reg. No.: 29,999

Telephone: 203-777-6628
Telefax: 203-865-0297

Date: June 2, 2008